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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TERRY DeLOYE,

Plaintiff and Appellant,

v.

INSURANCE COMPANY OF THE WEST et
al.,

Defendants and Respondents.

G028044

(Super. Ct. No. 806489)

OPINION

Appeal from a judgment of the Superior Court of Orange County, H. Warren Siegel, Judge. Dismissed.

John K. Saur for Plaintiff and Appellant.

Chapman, Glucksman & Dean, Dominic J. Fote and Cynthia R. Lane for
Defendants and Respondents.

* * *

THE COURT: *

Terry DeLoye filed an action against Insurance Company of the West, Explorer Insurance Company, Robert Moreno Insurance Services (the insurers), and Annex Insurance Brokerage, Inc. (Annex), for breach of contract and breach of the implied covenant of good faith and fair dealing. He claims the insurers improperly refused to pay a claim.

The insurers filed a motion for summary judgment. The court granted the motion, and judgment was entered April 21, 2000. Notice of entry of judgment was served by the insurers the same day. On August 4, 2000, DeLoye voluntarily dismissed Annex. A notice of appeal as to the insurers was filed October 3, 2000. The insurers filed a motion to dismiss the appeal, claiming the notice was not timely filed.

California Rules of Court, rule 2(a)(2) provides that a notice of appeal must be filed within 60 days of service of the notice of entry of judgment. Given that the notice of appeal was filed October 3, which is more than 60 days after April 21 (when the notice of entry of judgment was served), the appeal must be dismissed. (See *Panico v. Truck Ins. Exchange* (2001) 90 Cal.App.4th 1294, 1300-1301.)

DeLoye tries to save the appeal by arguing the one final judgment rule applies. He asserts the dismissal of the insurers was not a final judgment here because a cause of action remained as to Annex, and Annex and the insurers acted in concert in refusing to pay the claim. He insists there was no one final judgment until he dismissed the complaint against Annex. While a cogent argument, it has been resolved against appellant. (See, e.g., *Millsap v. Federal Express Corp.* (1991) 227 Cal.App.3d 425-430; *Johnson v. Threats* (1983) 140 Cal.App.3d 287, 289.)

The appeal is dismissed. Respondents shall recover their costs on appeal.

* Before Sills, P. J., Rylaarsdam, J., and Bedsworth, J.